VETO MESSAGES

OF

FRANK O. LOWDEN

GOVERNOR
of
ILLINOIS

OF

Senate and House Bills.

Fifty-first general assembly

1919

[Printed by authority of the State of Illinois.]

Veto Messages

of Governor on

Senate Bills Passed by the Fifty-first General Assembly

STATE OF ILLINOIS
EXECUTIVE DEPARTMENT
SPRINGFIELD

TRANSFER OF REALTY.

June 30, 1919.

The Honorable, the Senate:

I return herewith without my approval Senate Bill No. 11, the same being a bill for "An Act to amend an Act entitled: 'An Act for the assessment of property and providing the means therefor and to repeal a certain Act therein named,' approved February 25, 1898, in force July 1, 1898, as amended, by adding thereto a new section, to be known as Section 10a, and by amending section thirty-five (35) of said Act," and for reasons for my veto submit the following:

This bill is amendatory of the Revenue Act of 1898 by adding thereto the requirement that before a deed transferring real estate shall be recorded, it shall be submitted to the county clerk for the purpose of having the county clerk note such transfer on the tax books.

The object and purpose of the bill evidently is to provide a means whereby the collector's book shall show the name of the present owner of the land. Such object and purpose would not be fully carried out under the provisions of this bill. There is no provision whereby any notation can be made on the collectors' books after such books have been delivered by the county clerk to the collectors, there being no provision of the bill whereby such notation must be made by the collectors. In actual practice it often occurs that the same tract is transferred a number of times during the year and the notation of the chain of title on the collectors' books would greatly encumber the books at greatly added expense to the county.

A more substantial objection to the bill is the delay and inconvenience which may cause the grantee to lose valuable rights. There is no provision whereby the county clerk, after making the notation upon the collectors' books must deliver the deed to the recorder for

record. If he does so, it is purely a matter of accommodation. I think it safe to say that a very large percentage of deeds transferring real estate are transmitted to the recorder by mail. In such case, the deeds would be transmitted to the county clerk for notation on the collectors' books and by him returned to the person tendering the same unless as a matter of accommodation he should offer to file the same with the recorder. Matters affecting the title of real estate and the rights of parties therein should not be left to accommodation or chance. The delay which is possible under this bill might cause the loss of valuable rights.

For the reasons stated therefore, I withhold my approval of this bill.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

COUNTY AGRICULTURAL ADVISORS.

June 12, 1919.

The Honorable, the Senate:

I return herewith without approval Senate Bill No. 62, the same being a bill for "An Act in relation to the qualifications and compensation of county agricultural advisors", and for reasons for my veto submit the following:

In an official opinion of the Attorney General, passing upon the validity of this bill he advises me that in his opinion it is unconstitutional. A copy of the opinion of the Attorney General is appended hereto.

For the reasons stated in the opinion of the Attorney General, I withhold my approval of this bill.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

June 10, 1919.

TO THE GOVERNOR, *Springfield, Illinois.*

SIR: I have the honor to acknowledge the receipt of Senate Bill No. 62, being a bill for an act entitled, "An Act in relation to the qualifications and compensation of county agricultural advisors." which was transmitted to me by your Secretary on June 6, 1919, with a request for my opinion as to its constitutionality and form.

Section 1 of the Act provides in part as follows:

> "That each county farm bureau organized and incorporated under a charter issued by the Secretary of State, not more than one in each county, shall receive the sum of $1,200.00 per annum, payable in equal monthly installments to apply on the salary of the agricultural advisor employed by such bureau, under the conditions and subject to the provisions required by this Act. But in which such an agricultural advisor is not employed: *Provided*, that if there be more than one farm bureau or similar organization in any county, the University of Illinois shall determine which one is entitled to the amount therein provided."

It is to be noted that the power of determining which of two or more farm bureaus in any county shall receive said sum of $1,200, is delegated to the University of Illinois, and that there is no rule, method or basis fixed by the statute which the University of Illinois shall follow in making its determination. This is clearly a delegation of legislative power. The legislature must decide what the law shall be, and the power delegated to the legislative department by the constitution cannot be delegated to any other body or authority. Sutherland on Statutory Construction, Sec. 68; *Arms* v. *Ayer,* 192 Ill. 601, 611; *People* v. *Election Comrs.,* 221 Ill. 9, 19; *Rouse* v. *Thompson,* 228 Ill. 522, 535.

In *People* v. *Election Comrs., supra,* at page 19, the Court said:

> "A law must be complete in all its terms and conditions when it leaves the legislature, so that every one may know by reading the law, what his rights are and how it will operate when put into execution."

Here the legislature has not determined which one of two or more county farm bureaus shall receive the $1,200 fixed by the statute, but the selection is left to the University of Illinois, which institution may arbitrarily or otherwise choose which bureau shall receive said sum. I am of the opinion that the proviso is clearly unconstitutional and void.

The question then arises as to the effect of the unconstitutionality of the proviso upon the remainder of the section and upon the entire act. If the proviso is of no effect, then in all counties where there are more than one such organized farm bureau, there is no way by which it can be determined which one of such bureaus is entitled to the sum named in the section, and no one of them could receive it. I am not informed as to how many counties have or are likely to have more than one such bureau. But it is gravely doubtful whether the legislature would have passed the act if they had known and understood that under its provisions no aid could be given in the payment of the salary of any agricultural advisor in any county which has or might hereafter have more than one organized farm bureau. *Sheldon* v. *Hoyne,* 261 Ill. 223, 227.

Section 2 of the Act is as follows:

> "Each agricultural advisor so employed shall possess the qualifications required by the University of Illinois, namely: He shall have had actual farm experience and know farm life; he must be a graduate of a recognized college of agriculture, or have an education substantially equivalent thereto; he must have had five years of successful experience in some line of agricultural work since graduation. Compliance with such requirements shall be determined by the University of Illinois."

The qualifications of agricultural advisor fixed by this section are extremely indefinite, and their qualifications are practically left to be fixed by the University of Illinois. The query at once arises as to the meaning of "actual farm experience", and the construction of the requirement that the agricultural advisor shall "know farm life". Also who is to determine what is a "recognized college of agriculture?" By whom is it to be recognized? Who is to determine whether such graduate has "had five years of *successful experience*

in some line of agricultural work?" It seems that the University of Illinois is to construe these terms, set up the standards and determine whether the candidates fill the requirements. The entire matter of the qualifications of candidates is practically and substantially delegated to the University of Illinois. In my opinion this also constitutes an unconstitutional delegation of legislative power to the University of Illinois.

I am of the opinion, also, that it is a matter of grave doubt whether the power of passing upon the qualifications of candidates, even where the requirements are much more definitely fixed than in this Act, may lawfully be delegated to an institution or corporate body like the University of Illinois, which can only act through its officers, agents or servants. It would seem much wiser to delegate such power to a number of such officers or agents of the institution, or to provide for the appointment of a board or committee of such officers or agents.

For the reasons above stated, I am unable to approve said Senate Bill No. 62 as to constitutionality and form. I am returning said bill herewith.

Respectfully,
EDWARD J. BRUNDAGE,
Attorney General.

FUGITIVES FROM JUSTICE

June 30, 1919.

The Honorable, the Senate:

I return herewith without my approval Senate Bill No. 94, the same being a bill for "An Act to amend Section 11 of an Act entitled, 'An Act to revise the law in relation to fugitives from justice,' approved February 16, 1874, in force July 1, 1874, as amended," and for reasons for my veto submit the following:

Under the present law the State pays the expenses of the return of fugitives from justice in case the punishment is by confinement in the penitentiary. In all other cases the expenses are paid by the county. By this bill the State would be chargeable with the additional expense of the return of fugitives accused of the crime of wife abandonment and of child abondonment. The practical operation of the bill would add additional burdens to the State. The appropriations for the next biennium were made upon the theory of the continuance of the present statute. The appropriation so made will be sufficient to provide for the expense of the return of fugitives who are chargeable with crimes punishable in the penitentiary. Sufficient funds have not been provided by which the amendment made by this bill may be carried into effect.

Aside from the consideration just mentioned, I am impressed with the idea that our present statute requiring the State to pay the expenses of fugitives charged with crime punishable by imprisonment in the penitentiary and the county to pay the expenses in all other cases is based upon the correct principle.

For the reasons above stated, I withhold my approval of this bill.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

CHICAGO HEIGHTS ARMORY SITE.

June 30, 1919.

The Honorable, the Senate:

I return herewith without approval Senate Bill No. 106, the same being a bill for "An Act to authorize the purchase of a site for, and the erection of, an armory at Chicago Heights, Illinois, for the use of the military forces of the State of Illinois, and making an appropriation therefor," and for reasons for my veto submit the following:

Early in the session I announced the policy which I should follow as to armories. I pointed out that the bills introduced for armories alone would increase the tax rate more than ten cents on the hundred dollars. Stated differently, if these bills had all been permitted to become a law, the taxes for all State purposes would have been increased about fifteen per cent by virtue of armories alone. I stated that there was grave danger that armory appropriations would become "pork-barrel" legislation. I felt that while reasonable appropriations should be made for armories and armory sites such appropriations should be based upon the military needs of the State and should be limited to a reasonable amount in any one biennium. I asked the Adjutant General to make a report upon these principles. He did so and recommended the completion of the project at Peoria, which had already been commenced and a re-appropriation of the amount which was first appropriated four years ago for Kankakee. In addition, he found the most urgent need for a new armory was at Danville. No further recommendation was made by the Adjutant General's department.

Many of the Senators and Representatives who had advocated armories for their own districts, including such important places as Bloomington, Decatur, Champaign and Rockford, acquiesced in the program outlined as above. Others, however did not do so and appropriations have been made for sites for a number of other places whose claims are not superior at least to the claims of such cities as I have just named. It would be unjust now to those cities which acquiesced in my program if I were to approve of the appropriations for other cities whose needs are at least no more urgent than their own. We are now engaged in the reorganization of our National Guard. We are pushing that reorganization as rapidly as possible. Of course, that could not be done until the return of the Prairie Division, composed of the Illinois National Guard. Until that reorganization is completed, there is no one who can say with any sort of accuracy what the needs of the cities for which appropriations are asked will be. I suggest to the cities which seek armories and which

do not now have them that they show by their encouragement and support of their own National Guard units that they are entitled to consideration by the next General Assembly. It will then be for the military department of the Government, after a careful survey of the whole situation, to determine what cities shall be first preferred. In this way, and in this way alone, will we have a due and orderly development of State armories, determined upon merit and not by log-rolling in the Legislature.

For the reasons above stated, therefore, I withhold my approval of this bill.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

DEKALB ARMORY SITE.

June 30, 1919.

The Honorable, the Senate:

I return herewith, without approval, Senate Bill No. 158, the same being a bill for "An Act to authorize the purchase of a site for the erection of an armory at DeKalb, Illinois, and also to authorize the purchase of a site for the erection of an armory at Salem, Illinois, for the use of the military forces of the State of Illinois, and making an appropriation therefor," and for reasons for my veto submit the following:

I veto this bill for the reasons set forth at length in my message of this date to the Senate on Senate Bill No. 106.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

CITY POLICE PENSION FUND.

June 30, 1919.

The Honorable, the Senate:

I return herewith without approval Senate Bill No. 214, the same being a bill for an Act to amend Sections 1, 3, 4 and 8 of an Act entitled, "An Act to provide for the setting apart, formation and disbursement of a police pension fund in cities, villages and incorporated towns in the State of Illinois, having a population of not less than 5,000 and not more than 200,000 inhabitants," approved June 14, 1909, in force July 1, 1909, as amended, and for reasons for my veto submit the following:

In an opinion under date of June 21, 1919, the Attorney General advises me that in his opinion the Bill is unconstitutional. A copy of the opinion of the Attorney General is appended hereto.

For the reasons stated in the opinion of the Attorney General I withhold my approval of this bill.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

June 21, 1919.

To The Governor, *Springfield, Illinois.*

Sir: I have the honor to acknowledge receipt of your communication of June 20 transmitting for my consideration Senate Bill No. 214, the title of which is:

> "An Act to amend Sections 1, 3, 4 and 8 of an Act entitled, 'An Act to provide for the setting apart, formation and disbursement of a police pension fund in cities, villages and incorporated towns in the State of Illinois, having a population of not less than 5,000 and not more than 200,000 inhabitants,' approved June 14, 1909, in force July 1, 1909, as amended."

In 1909 the Legislature passed an Act providing for a police pension fund in cities having a population of not less than 20,000 and not more than 50,000 inhabitants. In 1913 said act and the title thereof was amended and the minimum and maximum population of cities was fixed at 9,000 and 50,000 respectively. In 1917 said act and the title thereof was again amended so as to include all cities having a population of not less than 5,000, and not more than 100,000 inhabitants. The purpose of this amendatory act was, among other things, to extend its provisions to municipalities having a population from 100,000 to 200,000.

The title of this act makes an erroneous reference to the title of the 1917 act as if it embraced cities of a population between 5,000 and 200,000 inhabitants. That act only embraces cities of a population between 5,000 and 100,000, and hence this act purports to amend an act not in existence. This act also fails to amend the title of the act of 1917. But even if the title of this act correctly set forth the title of the act of 1917, it is clear that because of the failure to amend the title of the act of 1917, Section 1 of the act would contain a subject outside of the original title. The title would embrace cities of a population between 5,000 and 100,000 and Section 1 would embrace cities of a population between 5,000 and 200,000, which would be obnoxious to the provisions of Section 13 of Article 4 of the constitution.

For the reasons stated, I am of the opinion that this act is unconstitutional. I approve of the form of the bill.

I am returning herewith said Senate Bill No. 214.

Respectfully,

Edward J. Brundage,
Attorney General.

ATHLETIC EXHIBITIONS.

The Honorable, the Senate:

I return herewith without approval Senate Bill No. 245 the same being a bill for "An Act in relation to athletic exhibitions", and for reasons for my veto submit the following:

I favor boxing. I had hoped that a bill would be presented to me which would authorize boxing as we have learned to know it at the military cantonments during the last two years. There has been ample opportunity for those who favor boxing to prepare a bill which would accomplish this. I had hoped that this was done when, a few days ago, I came to an examination of this bill. The more I study the bill, the more I confess my disappointment in it. So far as I can see, it provides all the accessories for a prize-fight, save the decision alone.

There are two sections of our Criminal Code which prohibit exhibitions of boxing and sparring matches. There are two other independent sections which prohibit prize-fighting and which make no reference to boxing or sparring. The bill before me provides not only that the first two sections should not apply to any club, corporation or association licensed by the commission provided for in this act, but also that the two sections which deal only with prize-fighting should not apply to such club, corporation or association. In other words, if this bill should become a law the only provisions of our Criminal Code against prize-fighting would not prevent the club, corporation or association licensed from conducting a prize-fight.

A bill almost identical with this, and upon which this was based, was enacted into law in New York in 1911. In practice there were so many abuses that in 1917 it was repealed by a substantial majority, and, so far as I can learn, there has since been no effort to re-enact it. New York is similarly situated, with reference to this question, as Illinois. What reason is there to suppose that this bill would operate satisfactorily in Illinois if it failed in New York?

I know that there is a large popular demand for boxing and sparring matches at this time, and much pressure has been brought to bear upon me to sign this bill. I am persuaded, however, that while the people of this State may favor boxing, they do not favor prize-fighting.

Perhaps I would not be justified in vetoing this bill for the above reasons. They should have been addressed to the General Assembly as involving a question of policy. There are however other reasons which, in my opinion, make it my plain duty to withhold my approval of the bill. The bill creates a commission which it authorizes to license any club, corporation or association to conduct a boxing or sparring match. It is expressly stated that:

"The commission may, in its discretion, issue, and at its discretion, revoke a license to conduct, hold or give boxing or sparring matches, and exhibitions, to any club, corporation or association."

The commission is not even required to formulate rules and regulations, upon compliance with which licenses will be granted. It is left absolutely to the commission, at its own discretion, to refuse or grant a license in any case. Such a provision is a delegation of legislative power which cannot be given under the Constitution and which has been repeatedly held unconstitutional by our Supreme Court.

This provision furnishes no standard and no guide for the Commission in the issuance of licenses. It is true that in this section it is also provided that every license shall be subject to such rules and

regulations, and amendments thereof, as the Commission may prescribe and which are not inconsistent with the Act, but it is evident that such rules and regulations as the Commission is authorized to promulgate are rules with reference to a license when issued, and nowhere in the Act is the Commission given power to make rules and regulations with reference to the granting of licenses.

Under this Act, the Commission would have the undoubted power to grant to one person a license and refuse a license to another person under exactly similar circumstances.

The Attorney General in his opinion, copy of which is hereto attached, finds that there is a doubt as to the constitutionality of this bill. I have read the decisions cited by him in his opinion, and I can come to no other conclusion than that this bill is clearly unconstitutional.

Besides, it would require considerable State machinery to administer the bill if it were to become a law. The General Assembly has made no appropriation to defray the expenses of administration. There is no fund available for this purpose. Therefore, if it were to become a law, it would be inoperative until the next session of the General Assembly unless I convoked an extraordinary session of the General Assembly to make an appropriation. No one, I think, would regard it justifiable to go to the expense of an extra session for this purpose.

It would be much easier for me to yield to the popular pressure and sign this bill, but in so doing, I would fail, in my opinion, in the performance of my duty.

For the reasons above stated, I withhold my approval of this bill.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

OPINION OF THE ATTORNEY GENERAL.

The opinion of Attorney General Edward J. Brundage which was attached to the Governor's veto was as follows:

June 30, 1919.

TO THE GOVERNOR, *Springfield, Illinois.*

SIR: I have the honor to acknowledge the receipt of Senate Bill No. 245, the same being a bill for an act entitled,

"An Act in relation to athletic exhibitions", which has been transmitted to me by your direction with a request for an opinion as to its constitutionality and form.

The bill provides for the appointment by the Governor of three persons to constitute an athletic commission, who shall serve without compensation, and for the appointment of a secretary to the commission, with a salary of $3,600 per year.

It is provided that the commission shall maintain offices in the Capitol at Springfield and also in other parts of the state which the commission may designate. The commission shall organize within

thirty days after appointment and on or before the first day of October thereafter by appointing one member chairman. Said commission may make such rules and regulations as it may deem expedient for the transaction of its business and may from time to time amend the same. It is empowered to employ such assistants and clerks as it may deem necessary whose salaries shall be fixed by the commission. The commission is authorized to incur necessary expenses for office furniture, stationery, printing and incidental expenses. It is required to make an annual report of all its proceedings to the Governor on or before the 31st day of December in each year and to send therewith such recommendations as it may deem desirable.

The commission is vested with the sole direction, management and control of and jurisdiction over all boxing and sparring matches and exhibitions in the state by any club, corporation, or association, and no sparring or boxing match or exhibition shall be conducted, held or given in the state except pursuant to the authority of the commission and in accordance with the provisions of this act. But the commission shall have no power to issue any license to conduct a boxing or sparring exhibition in any city, village or incorporated town in which the council or village board has prohibited by ordinance the holding of boxing matches or exhibitions. It is provided that the commission may, in its discretion, issue and revoke a license to conduct, hold or give a license to conduct boxing and sparring matches and exhibitions to any club, corporation or association. But no such license shall be issued unless the club, corporation or association shall have owned or held a lease on the building or grounds where it is proposed to conduct the exhibition, provided however that such club, corporation or association owning or having such a lease of a clubhouse or headquarters in the city may give the same in such clubhouse or headquarters or may for that purpose secure the use of any public hall, auditorium or theatre within the city. It is also provided that every license shall be subject to such rules and regulations and amendments thereof as the commission may prescribe.

The bill provides for an application for license verified by some officer of the club, corporation or association, and that the application shall be accompanied by annual fees as follows: In cities of not more than 5,000 inhabitants, $25.00; in cities of not more than 50,000 inhabitants, $50.00; in cities of not more than 100,000 inhabitants, $100.00; in cities having 1,000,000 inhabitants, clubs having a seating capacity of less than 2,000 shall pay $250.00, and clubs having a seating capacity of over 2,000 shall pay a license fee of $500.00.

The bill provides for a report by every club, corporation or association after every contest and shall pay to the State Treasurer 5% of the gross receipts of such contest. It also provides for a bond to be executed and filed with the State Treasurer conditioned for the payment of the tax.

The bill provides for inspectors who shall attend such contests or exhibitions and be present at the counting up of the gross re-

ceipts and shall mail to the commission the official box statement received by him from the club, corporation or association.

The bill provides that no such exhibitions shall be held on Sunday; that no person under the age of 18 years shall participate in such exhibition; that no intoxicating liquors shall be sold or given away in the building where the exhibition is conducted; and that no gambling, betting or wagering shall be permitted after or during any contest on the result thereof in the building where it is held.

The bill provides for the physical examination of contestants, for contests of not to exceed 10 rounds of three minutes each, with intermissions of not less than one minute; and for gloves of standard make and specified weight.

The bill provides that no contestant may participate in any such boxing match or exhibition unless registered and licensed by the commission upon the payment of an annual license fee of $5.00 per year. Also, the commission shall grant licenses to competent referees who shall be residents of the State for a year, and may revoke said licenses for any cause deemed by the commission sufficient. The application for referee shall be accompanied by an annual license fee of $25.00. The commission shall appoint from licensed referees the referee for all contests under this act. All fees received by the commission shall be turned over to the State Treasurer and placed to the credit of the general fund.

It is provided that any club, corporation or association which conducts a sham or fake match shall forfeit its license, and that any contestant who shall participate in a sham or fake contest shall be for the first offense restrained for six months from taking part in any contest, and for a second offense he shall be totally disqualified from taking part in any contest.

It is provided that whenever any such exhibitions are held at any public playgrounds, gymnasiums, schools, universities, Young Men's Christian Associations or under the auspices of the Amateur Athletic Union and American Amateur Federation where no admission fee is charged, the license fee and tax under this act shall not be required.

It is provided that any person who violates the provisions of the act for which there is no express penalty shall be guilty of a misdemeanor. Also, that the provisions of the Criminal Code relating to boxing and sparring contests shall not apply to contests and exhibitions conducted by a licensed club, corporation or association under this act.

The act is very loosely and indefinitely drawn. In section 5, which classifies cities and fixes fees for clubs, corporations and associations therein, there is no provision for licensing such institutions outside of cities. Also, it is to be noticed that there is no license fee fixed for cities from 100,000 to 1,000,000 inhabitants. This was evidently an inadvertent omission, the effect of which is uncertain. In the case of *Dupee* v. *Swigert,* 127 Ill., 494, where a somewhat similar mistake and omission was made, the court refused

to say the classification was invalid or that the act was unconstitutional.

In section 20, Young Men's Christian Associations are specially and arbitrarily exempted, there being no exemption of similar organizations. However, I am of the opinion that while this would be an invalid exemption, it would not affect other general exemptions or the validity of the act as a whole.

The act by its terms provides for licenses only to clubs, corporations and associations, and by a strict literal construction no license could be issued to an individual. But it is provided in the fifth clause of section 1 of chapter 131, Hurd's Statutes, 1917, that

> "the word 'person' or 'persons' as well as all words referring to or importing persons, may extend and be applied to bodies politic and corporate as well as individuals."

The courts would probably hold that the words "club, corporation or association" as used in the bill, includes individuals or persons.

The bill confers very broad powers upon the commission created by it, and there is some reason to believe that the courts might hold it unconstitutional as delegating legislative powers to the commission.

The meaning and relationship of the provisions of section 4 are by no means clear. If the provision contained in said section which reads

> "the commission may, in its discretion, issue and at its discretion revoke, a license to conduct, hold or give boxing or sparring matches and exhibitions to any club, corporation or association,"

is construed to be separate and apart from the other provisions of section 4 and from the provisions of section 3, then the court would probably hold that the said provision delegates legislative power to the commission. *Kenyon* v. *Moore,* 287 Ill., 233; *People* v. *Vickroy,* 266 Ill., 384; *Board of Administration* v. *Miles,* 278 Ill., 174. However, if that provision is considered in connection with the other provision of section 4 which reads:

> "Every license shall be subject to such rules and regulations, and amendments thereof, as the commission may prescribe, which shall not be inconsistent with this act,"

and with the provision of section 3 which reads:

> "Said commission may make such rules and regulations as it may deem expedient for the transaction of its business and it may from time to time amend such rules and regulations,"

the court might take the view that the commission is authorized to make and adopt reasonable rules and regulations as to what clubs, corporations and associations may receive licenses, and that the courts may pass upon the reasonableness of such rules, and thus prevent arbitrary action in granting licenses. *People* v. *Kane,* 288 Ill., 235. If the court should take this latter view of the act as a whole, it would probably hold that it does not delegate legislative power to the commission or give it unrestricted and arbitrary power.

These questions above discussed are doubtful and difficult and it is impossible to say what the courts will hold in relation thereto. While for the reasons above stated there is doubt as to the constitutionality of the act, yet I do not think it is clearly unconstitutional

under the most recent decision of the Supreme Court *(People* v. *Kane, supra)* and I am inclined to the opinion that the doubt should be resolved in favor of the constitutionality of the act.

I find no objection to the form of the bill, and I am returning the same herewith.

Respectfully,

(Signed) EDWARD J. BRUNDAGE,
Attorney General.

RELATION TO DOWER RIGHTS.

June 30, 1919.

The Honorable, the Senate:

I return herewith without my approval Senate Bill No. 337, the same being a bill for an Act to amend an Act entitled, "An Act to revise the law in relation to dower", approved March 4, 1874, in force July 1, 1874, as subsequently amended, by adding thereto four new sections to be known as Sections 48, 49, 50 and 51, and for reasons for my veto submit the following:

This bill fails to require either actual or constructive notice to the person having an inchoate right of dower, and who is required to file notice of such claim in the office of the Recorder of Deeds within the time fixed by the several sections of the Act, in order to preserve such right.

Under Section 48, the claim must be filed "within twenty years from the date when said title, right or interest was relinquished or divested", instead of twenty years from the date the conveyance was recorded.

Section 49 contains no requirement whatever with reference to the recording of the conveyance by which the title, right or interest is divested, but the periods mentioned in the two paragraphs of the section commence to run from "the date when said title, right or interest was relinquished or divested."

Under the provisions of this bill it would be possible, by withholding a conveyance from the records, to bar the inchoate right of dower of a husband or wife without any notice, either actual or constructive, that anything had occurred which would require action on his or her part.

The bill is also defective in that it fails to protect the interests of a spouse who is *non compos mentis* or otherwise disabled.

For the reasons above stated I withhold my approval of this bill.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

SOLICITATION OF FUNDS.

June 30, 1919.

The Honorable, the Senate:

I return herewith without approval Senate Bill No. 344. The purpose of this bill is highly commendable. It grew out of a recom-

mendation of the State Council of Defense. An Act was passed at the last session of the General Assembly to regulate the solicitation of funds and other property for purposes of war aid and war charity during the duration of the war. The administration of that Act was put in the hands of the State Council of Defense. It proved highly successful under the administration of that body. Numberless schemes fraudulent in effect for appealing to the sympathies of the public were discovered by the State Council of Defense and licenses were refused. Undoubtedly millions of dollars were saved to the public in this way. So advantageous was this law that among other recommendations made, the State Council of Defense suggested a similar law as a part of our permanent policy, to be administered by the Department of Public Welfare. As soon as the control of the State Council of Defense over solicitation of funds for war purposes is withdrawn, they fear that the public will be flooded with fraudulent schemes for obtaining money in the name of patriotic and charitable purposes.

Unfortunately, in drafting this bill, provisions were incorporated which extended it beyond the purposes of the State Council of Defense. Because of this I feel that it might be made an instrument of injustice or oppression, and therefore withhold my approval of this bill. I do this with great reluctance because the purpose of the bill is admirable and I hope that a similar bill without these objectionable features may be presented to the next General Assembly.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

LEVYING OF TAXES.

June 26, 1919

The Honorable, the Senate:

I return herewith without approval Senate Bill No. 350, the same being a bill for "An Act to amend Section 1 of Article VIII of an act entitled, 'An Act to provide for the incorporation of cities and villages', approved April 10, 1872, in force July 1, 1872, as subsequently amended", and for reasons for my veto submit the following:

This bill passed both houses of the General Assembly prior to the passage of the series of bills changing the basic rate of taxation. The substance of this bill is incorporated in Senate Bill 560, which has been approved.

For the reason above stated, I return this bill without approval.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

June 18, 1919.

TO THE GOVERNOR, *Springfield, Illinois.*

SIR: You have transmitted to me Senate Bill No. 350, and request that I give you an opinion thereon as to form and constitutionality.

Said bill amends section 1 of article 8 of the Cities and Villages Act to provide that cities and villages having a population of 150,000 or more shall have the power to levy taxes not to exceed a rate of two and fifteen one-hundredths per centum, exclusive of taxes levied for specific purposes therein designated, from the time said Act becomes effective up to and including the year 1921, after which date such cities are not to levy taxes in excess of a rate of one and two-tenths per centum; and that cities and villages having a population of less than 150,000 may levy taxes not to exceed a rate of two per centum, exclusive of taxes levied for specific purposes, from the time said Act becomes effective up to and including the year 1921, after which time cities and villages have a population of less than 150,000 cannot levy taxes in excess of a rate of one and two-tenths per centum. Said Act further provides that cities and villages having a population of less than 20,000 may appropriate any money in the treasury not otherwise appropriated for the purpose of oiling streets within their corporate limits.

Said bill is not subject to objection as to form or constitutionality. Same is herewith returned.

Respectfully,

EDWARD J. BRUNDAGE,
Attorney General.

TAXES FOR COUNTY PURPOSES.

June 26, 1919.

The Honorable, the Senate:

I return herewith without approval Senate Bill No. 351, the same being a bill for "An Act to amend Section 20 of an Act entitled, 'An Act concerning the levy and extension of taxes', approved May 9, 1901, in force July 1, 1901, as subsequently amended", and for reasons for my veto submit the following:

This bill passed both houses of the General Assembly prior to the passage of the series of bills changing the basic rate of taxation. The substance of this bill is incorporated in Senate Bill 561, which has been approved.

For the reason above stated, I return this bill without approval.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

June 20, 1919.

TO THE GOVERNOR, *Springfield, Illinois.*

SIR: You have transmitted to me Senate Bill No. 351, same being—

> An Act to amend Section 2 of an Act entitled, "An Act concerning the levy and extension of taxes," approved May 9, 1901, in force July 1, 1901, as subsequently amended;

and request an opinion as to its constitutionality and form.

Said Act is not subject to objection as to form. The bill amends Section 2 of what is known as the "Juul law," to include "pension fund taxes", among taxes not subject to scaling; and provides further that from the taking effect of said Act to and including the year 1921, the rate per cent of taxes levied for county purposes in counties having a population of over 300,000 shall not be reduced below a rate of fifty-five cents on the hundred valuation (exclusive of levies to pay the principal and interest on bonded indebtedness and judgments and mothers' pension fund), and thereafter shall not be reduced below a rate of forty-five cents on the hundred, exclusive of the specific tax levies above named. It further provides that in counties having a population of less than 300,000, the rate of taxes levied for county purposes shall not be reduced below seventy-five cents on the hundred, valuation (exclusive of levies to pay bonded indebtedness and judgments); that the rate levied for city or village purposes, exclusive of levies named for specific purposes, in cities and villages having a population of over 150,000, shall not be reduced below a rate of two dollars and fifteen cents on the hundred; and that in cities and villages having a population of less than 150,000, exclusive of levies named for specific purposes, shall not be reduced below a rate of two dollars on the hundred valuation.

If the provision that "in counties having a population of less than 300,000 the rate of the tax levy for county purposes shall not be reduced below a rate of seventy-five cents on each one hundred dollars assessed value (exclusive of levies to pay the principal of and interest on bonded indebtedness and judgments), means that counties having a population of less than 300,000 may levy taxes for county purposes in excess of a rate of seventy-five cents on the hundred, for the purpose of paying bonded indebtedness incurred since the adoption of the Constitution of 1870, and for the purpose of paying judgments, said provision would seem to conflict with Section 8 of Article 9 of the Constitution, which provides as follows:

> "County authorities shall never assess taxes, the aggregate of which shall exceed seventy-five cents per $100 valuation, except for the payment of indebtedness existing at the adoption of this Constitution, unless authorized by a vote of the people of the county."

It will be noted that said section makes no mention of taxes levied to pay judgments, and the exception as to bonded indebtedness relates to bonded indebtedness existing at the time of the adoption of the Constitution.

The question as to whether the above noted provision conflicts with the provisions of the Constitution would seem properly to be a matter to be determined by the courts; and even though said provision should be held to be invalid, the invalidity of that particular provision would not affect other provisions of said bill.

Same is herewith returned.

Very respectfully,

EDWARD J. BRUNDAGE,
Attorney General.

FIREMEN'S PENSION FUND TAXES.

June 30, 1919.

The Honorable, the Senate:

I return herewith without my approval Senate Bill 420, the same being a bill for "An Act to amend Section 1 of an Act entitled, 'An Act to revise the law creating a firemen's pension fund in cities, villages and incorporated towns with a population of not less than five thousand and more than two hundred thousand inhabitants,' filed with the Governor June 28, 1917, in force July 1, 1917". For reason for my veto I submit the following:

The act which Senate Bill 420 purports to amend is repealed by House Bill 183, passed at this session, which has become a law.

For the reason above stated, I return this bill without approval.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

TAXES FOR FREE SCHOOLS.

June 30, 1919.

The Honorable, the Senate:

I return herewith without my approval Senate Bill No. 503, the same being a bill for "An Act to amend an Act entitled: 'An Act to establish and maintain a system of free schools,' approved and in force June 12, 1909, as subsequently amended, by amending Section 211 thereof, to read as follows:"

For reason for my veto I submit the following:

This bill passed both houses of the General Assembly prior to the passage of the series of bills changing the basic rate of taxation. The substance of this bill is incorporated in Senate Bill 560, which has been approved.

For the reason above stated, I return this bill without approval.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

TAXES FOR PUBLIC HOSPITALS.

June 30, 1919.

The Honorable, the Senate:

I return herewith without approval Senate Bill 537, same being a bill for an Act to amend Section 1 of an Act entitled, "An Act to enable cities to establish and maintain public hospitals," approved June 17, 1891, in force July 1, 1891, as subsequently amended, and for reason for my veto submit the following:

That the Act which Senate Bill 537 purports to amend is repealed by House Bill 569, which has already been signed.

For the reason above stated I withold my approval of this bill.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

TAXES FOR PUBLIC PARKS.

June 30, 1919.

The Honorable, the Senate:

I return herewith without approval Senate Bill No. 564, the same being a bill for an Act to amend Section 1 of an Act entitled, "An Act to authorize cities and villages having a population of less than 50,000 to purchase, establish and maintain public parks by taxation, and to lease the same to county fairs", approved June 6, 1919, and for reason for my veto submit the following:

That it is unnecessary for this bill to become a law inasmuch as like provisions are contained in Senate Bill 458, which bill has been approved.

For the reason above stated I withhold my approval of this bill.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

TAXES FOR PUBLIC HOSPITALS.

June 30, 1919.

The Honorable, the Senate:

I return herewith without my approval Senate Bill 566, the same being a bill for an Act entitled, "An Act to revise the laws in relation to establishing and maintaining public hospitals in cities of less than one hundred thousand inhabitants", and for reason for my veto submit the following:

That it is unnecessary for this bill to become a law inasmuch as like provisions are contained in House Bill 569, which I have approved.

For the reason above stated I withold my approval of this bill.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

SITE FOR JOLIET ARMORY.

June 30, 1919.

The Honorable, the Senate:

I return herewith, without approval, Senate Bill No. 571, the same being a bill for "An Act to authorize the purchase of a site for the erection of an armory at Joliet, Illinois, for the use of the military forces of the State of Illinois, and making an appropriation therefor", and for reasons for my veto submit the following:

I veto this bill for the reasons set forth at length in my message of this date to the Senate on Senate Bill No. 106.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

SITE FOR ELGIN ARMORY.

June 30, 1919.

The Honorable, the Senate:

I return herewith, without approval, Senate Bill No. 572, the same being a bill for "An Act to authorize the purchase of a site for the erection of an armory at Elgin, Illinois, for the use of the military forces of the State of Illinois, and making an appropriation therefor", and for reasons for my veto submit the following:

I veto this bill for the reasons set forth at length in my message of this date to the Senate on Senate Bill No. 106.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

VETO MESSAGES OF GOVERNOR ON HOUSE BILLS PASSED BY THE FIFTY-FIRST GENERAL ASSEMBLY.

CIVIL SERVICE PREFERENCE TO SOLDIERS AND SAILORS OF WORLD WAR.

May 6, 1919.

The Honorable, the House of Representatives:

I return herewith without approval House Bill 7, the same being a bill for

"An Act to amend Section 10 of an Act entitled, 'An Act to regulate the civil service of the State of Illinois', approved May 11, 1905, in force November 1, 1905, as amended."

The bill amends that section of the State Civil Service Act which, among other things, gives preference for appointment to persons who have been engaged in the military or naval service of the United States, and who have been honorably discharged therefrom. The present act specifically gives a preference for appointment to veterans of the Civil War, the Philippine Insurrection, the Boxer uprising in China and Spanish-American War. It also gives a preference under the construction by the Civil Service Commission to all honorably discharged soldiers and sailors of the World War. The bill under consideration extends a preference to soldiers and sailors of the World War, who are on inactive or reserve duty. It, however, excepts members of the Students' Army Training Corps and conscientious objectors from its provisions. The bill also contains a clause under a proviso to the effect that soldiers or sailors shall not supplant any one now in the State service who may have competed in the same examination and may have obtained a higher rating.

One effect of this bill is to remove from the operation of the law persons honorably discharged from the Students' Army Training Corps—persons now entitled to preference.

The reason for the exclusion from preference of men who served in the Students' Army Training Corps is not apparent. These men were in the military service of the United States just as completely as were the men who were sent to military camps. They were under the most rigid military discipline. They received military pay while in the training corps. They were subject to overseas service the same as any other person in the army of the United States. They were discharged in the same manner as any other soldier. In the manner of their induction, they were, as I am advised, for the most part men who volunteered their service prior to a call under the draft, although their names were on the selective service list. Why that fine body of young men who volunteered in advance of the call, who made the same sacrifices, and submitted to the same rigorous discipline as did

their comrades in the other training camps, should be put in the class of conscientious objectors, it is difficult to understand.

Exclusion of men from the Students' Army Training Corps from a preference cannot in my judgment be justified on any sound principle of policy. *All* soldiers and sailors of the late war should be given a preference, or none, or some middle ground should be found whereby all soldiers and sailors, irrespective of the particular units or classes in which they have served, should be placed upon an equal footing in the administration of the Civil Service Law.

It is difficult to justify the matter contained in the proviso relative to the competition of a soldier or sailor with a person now in the State service. The proviso is ambiguous. Under one construction it is retroactive and applies only to examinations heretofore held in which persons in the service and veterans of some war prior to the World War, were in competition.

Giving the proviso a construction which would make it operate retroactively its effect might be to deny to a veteran of a prior war the rights which he had under the law as it existed at the time he took his examination. Under such construction the proviso would have no prospective operation, and would be to legislate simply for particular cases.

If, however, the proviso should operate prospectively it would give the soldier no preference in case he competed in an examination with a person in the State service on the day the amendatory act became effective. Neither construction is in harmony with sound principles of civil service legislation.

For the reasons above stated I withhold my approval of this bill.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

BOUNTY ON RATS.

June 24, 1919.

The Honorable, the House of Representatives:

I return herewith without approval House Bill No. 54, the same being a bill for "An Act to provide for the payment of a bounty for killing rats, and making the breeding of rats for the purpose of securing such bounty a misdemeanor and providing a penalty therefor", and for reasons for my veto submit the following:

The bill provides for the payment by the county of two cents for each "common house rat" killed when the heads of such rats are delivered to the proper officials in lots of not less than ten.

The object of the bill, of course, is to provide a means for the extermination of a noxious animal. Bounty laws have existed in the United States for more than two centuries and a half. They have entailed the expenditure of large sums of money, the Year Book for the United States Department of Agriculture for 1896 estimating that over $3,000,000 was expended in a quarter of a century preceding 1896. This kind of legislation has proved ineffective and expensive.

Noxious animals have not been exterminated in the United States through any bounty legislation. The Year Book of the United States Department of Agriculture states that bounties have not resulted in the extermination of a single species in the United States and have failed even in the island of Bermuda, which has an area of less than twenty square miles. This bill would necessarily deplete the county finances. The counties need all the revenue they can levy for legitimate governmental purposes. I am impressed with the idea that the payment of bounty for rats would unnecessarily squander the county revenues without any appreciable compensating benefit. I return this bill without my approval.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

SPECIAL TAX FOR PUBLIC HOSPITALS.

April 18, 1919.

The Honorable, the House of Representatives:

I return herewith without approval House Bill 67, the same being a bill for "An Act to amend sections one (1), two (2) and six (6) of an Act entitled, 'An Act to enable cities to establish and maintain public hospitals'."

This bill does two things:

(1) It authorizes an increase of a special tax for public hospitals in cities of less than 100,000 inhabitants from three mills on the dollar to five mills on the dollar;

(2) It authorizes the issuance of bonds for a period of twenty years for the purpose of constructing buildings and additional buildings for hospital purposes, such bonds to be paid out of taxes authorized by the Act.

Neither the increase of the special tax from three mills on the dollar to five mills on the dollar, nor the issuance of bonds for twenty years is required to be submitted to a vote of the people.

No referendum in either case is required.

The tax authorized by the Act to which this bill is an amendment and the tax authorized by the bill is in addition to the aggregate amount of taxes which may be levied for general city purposes. It is a special tax for a special municipal purpose.

In a veto message to the Fiftieth General Assembly, I used this language:

"Taxes are already so high that I submit that any increase in the authorized rate should first have the approval of the people, unless there is a plain emergency which will not permit of delay.

"It is not enough to say that money is needed for this purpose or that. There are always pressing needs for improved public service everywhere. But those needs must be met by a more rigid economy and not by increased tax rate where the tax rate has already become so excessive that any increase adds an unbearable burden. The people

in the several districts who pay taxes can determine this question better than the General Assembly."

If it is sought to rest this bill upon the ground that "there is a plain emergency which will not permit of delay," to quote again from my message of two years ago cited above, that emergency would be met by limiting the operation of this law to say three years. It might well be that the emergency would then be past.

The above language from my veto message to the Fiftieth General Assembly is peculiarly appropriate to the bill under consideration. In this connection it is worthy of consideration that the vote upon a special tax or upon an increase of a special tax should be a majority vote of those voting at the election, and not a majority of those voting upon the proposition. The Act to which this bill under consideration is an amendment, announces in my judment the correct principle, namely, that the proposition to levy a special tax for hospital purposes should receive a "majority of all the votes cast in such city".

There is another objectionable feature of this bill to which I wish to call your attention. That is, the authorizing of a special tax for some special purpose and then providing that such tax shall be in addition to taxes authorized by the Cities and Villages Act. So far as possible, this practice should be avoided. Even if the purpose is laudable, the special tax for a special purpose inevitably tends to extravagance. It may be in excess of the needs for that particular purpose, in which event some means will be found to divert the excess to some other purpose for which appropriation has not been made. Special taxes should be discouraged.

In addition, the appropriating body is hampered in making distribution of the amounts needed for various purposes. Where the general tax covers all the purposes for which appropriations are made, the fund can be apportioned to those purposes in accordance with their varying needs. One year more money may be required for one purpose and less for another than in the succeeding year. The relative needs of the different activities change from time to time.

Moreover, it has been the established policy of this State for more than ten years, to require a referendum on all city bond issues. This principle is sound, and should not be departed from. The bill under consideration disregards this sound principle of policy and authorizes bonds to be issued without any vote of the people.

I concede that there may be an emergency in respect to many matters of expenditure at the present time. I insist, however, that there is also an emergency as to the raising of revenues at this time. The two emergencies must be considered together. The inequalities of taxation, the entire escape from taxation by some corporations and individuals, the utterly haphazard assessments of property for taxation in this State, have been notorious for many years. In a recent decision of the Supreme Court, it was declared that something like a thousand corporations, in one year, subject to the capital stock and franchise tax, had escaped such tax altogether.

In some counties, property is assessed at double the amount that precisely the same kind of property is assessed in others. There is a bill before your Honorable Body to remove these inequalities and to substitute therefor the rule of equality. If this bill becomes a law, it will in a measure at least remove the necessity for increase in tax rates. The two subjects should be considered together. You can only meet an emergency calling for larger expenditures by meeting the corresponding emergency creating larger revenues.

I realize the increased cost of government, due to the extraordinary conditions growing out of the war. Of course this increased cost must be met. This necessity, however, only emphasizes our duty to scrutinize with the utmost care every appropriation and every increase in the tax rate asked. If all the bills now pending before your Honorable Body were to become laws, I estimate that the tax rate for the State would be doubled, and likewise the tax rate for municipalities.

Instead of the increased cost of government giving us caution, it seems to have had the opposite effect. During the war, all we asked was speed. We did not expect public officials to stop to count the cost of any step which we believed would help to victory. But the war is over. We must now plan to pay the cost. A new spirit must control public officials chargeable with expenditures of the public money if we are to succeed in paying the cost of the war. We must return to that very commonplace principle that the richer you are, the worse off you are if you fail to live within your means.

For the reasons above stated, I withhold my approval of this bill.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

ISSUANCE OF CHECKS TO DEFRAUD.

June 30, 1919.

The Honorable, the House of Representatives:

I return herewith without my approval House Bill No. 171, the same being a bill for "An Act to amend Section 1 of an Act entitled: 'An Act to punish the making, drawing, uttering or delivering of checks, drafts or orders for the payment of money with intent to defraud,' approved May 26, 1917, in force July 1, 1917," and for reasons for my veto submit the following:

This bill is amendatory of the act of 1917 providing for the punishment of persons making and delivering checks with intent to defraud. It adds a proviso that a person shall be subject to the penalties of the act who after having made or delivered a check shall with intent to defraud withdraw the money from the bank on which the check was drawn. The proviso states that "the provisions of this Act shall not apply to the giving of any check, draft or other order unless the same is presented for payment within a reasonable time after the issuance thereof".

The effect of the proviso, applying as it does to the whole Act, is to nullify for all practical purposes the force and effect of the Act. The question as to what would constitute a reasonable time is a question of fact for the jury. The jury might determine in one case that a given period for presentation constitutes a reasonable time and in another case another given period constitutes a reasonable time. The amendment interjects an element of doubt and uncertainty into a criminal statute. A criminal statute should be definite and certain. The statute as amended by this bill would leave its enforcement to the caprice of juries.

For the reasons above stated I return this bill without my approval.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

REGISTRATION OF VOTERS.

June 30, 1919.

The Honorable, the House of Representatives:

I return herewith without my approval House Bill No. 254, the same being a bill for "An Act to amend an Act entitled, 'An Act regulating the holding of elections and declaring the results thereof in cities, villages and incorporated towns in this State,' approved June 19, 1885, in force July 1, 1885, as amended, by adding to Article III thereof a section to be known as Section 5a," and for reasons for my veto submit the following:

This bill is an amendment to the City Elections Act and authorizes any registered voter to register the members of his household, in all cities of a population of less than seventy-five thousand, who are related to such registered voter "by blood, marriage or adoption," without such members of the family appearing in person before the election officials.

The City Elections Act is intended to prevent fraud in elections. One of the methods found efficacious in the practical operation of this Act in the prevention of fraud is the personal appearance of the elector before the election officials and his examination under oath by them touching his qualifications to vote. This bill, as applied to cities of less than seventy-five thousand, abrogates that salutary rule. In my judgment, it opens up avenues for fraud and illegal voting which the City Elections Act was designed to close. It is denounced as a dangerous and vicious measure and a step backward by practically all of the Boards of Election Commissioners of the cities affected.

For the reasons above stated, I withhold my approval of this bill.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

MILTON BRECKENRIDGE CLAIM.

June 28, 1919.

The Honorable, the House of Representatives:

I return herewith without approval House Bill No. 319, the same being a bill for "An Act to make appropriation to Ransom E. Walker, guardian of the estate of Milton Breckenridge, a minor, for compensation on account of personal injuries." This bill appropriates $1800 to a boy who lost his arm at the Parental School in the city of Chicago, while he was an inmate of that institution.

The Parental School in the city of Chicago is not a State institution, and the State of Illinois has no liability for an accident of this kind.

For the reason above stated, I withhold my approval of this bill.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

JAMES M. HANCOCK CLAIM.

June 28, 1919.

The Honorable, the House of Representatives:

I return herewith without approval House Bill No. 366, the same being a bill for "An Act for the relief of James M. Hancock, and making an appropriation therefor."

Mr. Hancock was shot by a police officer in the city of Chicago while that officer was attempting to arrest bandits who were reported to be robbing railroad offices in that city. Regrettable as the accident appears to have been, this claim in my opinion is one that is entirely against the city of Chicago, and the State therefore has no liability.

For this reason I withhold my approval of this bill.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

MINIMUM SALARY FOR TEACHERS.

June 30, 1919.

The Honorable, the House of Representatives:

I return herewith without my approval House Bill No. 395, the same being a bill for "An Act in relation to the compensation of teachers in public schools", and for reasons for my veto submit the following:

I believe that school teachers, as a rule, have not been given anything like adequate pay. However, this session of the Legislature has enacted a law by which the school districts of the State will be able to increase their taxes available for this purpose thirty-three and one-third per cent without referendum, and upon referendum one hundred per cent. In addition, the distributive fund, which largely is used for teachers' pay, appropriated by the General Assembly has been increased fifty per cent.

This bill provides that no teacher in any public school in this State, who has had one school year's experience as a teacher in the public schools, shall receive salary or compensation at a rate of less than $80 per month for the school year. By a proviso it is enacted that the Act shall not apply "to any school district which by levying the maximum amount of taxes authorized by law to be levied for educational purposes, is unable to obtain sufficient funds to comply with the same."

The only penalty prescribed for non-compliance with the Act is that the school district not paying the minimum compensation of $80 per month shall not be entitled during that school year to any portion of the State distributable school fund.

Our school law is based upon the theory of control and administration by local officials. Its administration is highly decentralized. School directors and boards of education are empowered under the school law "to appoint all teachers and fix the amount of their salaries."

This bill departs from the fundamental principle underlying the administration of our school law, in that it purports to withdraw from local officials the power to fix the salaries of the school teachers. In my judgment it is fundamentally wrong as a principle of government to confuse local control and detailed State control over the same subject matter. The school law should be administered upon the theory of local control as at present or of a more centralized State control until the whole theory of the school law is changed. I regard legislation of this kind as being opposed to sound principles of government and of administration.

The proviso which is added to Section 1 substantially destroys the purpose of fixing a definite minimum wage for teachers. Under this proviso the Act is not to apply "to any school district which, by levying the maximum amount of taxes authorized by law to be levied for educational purposes is unable to obtain sufficient funds to comply with the same." That is, the bill purports to promise a minimum compensation at the rate of $80 per month but substantially says only that a school district which has sufficient funds or which can raise such funds by levying taxes now authorized and does not pay the minimum rate shall be penalized by the loss of its portion of the distributable school fund.

A school district might be willing to waive its portion of the distributable school fund and thus ignore the provisions of the Act. The bill is not, properly speaking, a minimum wage bill. It holds out a promise of uniform salaries without any provision being made for the fulfillment of that promise. It is of doubtful value when it accomplishes only the purpose of penalizing school districts which do not pay the minimum fixed amount if they are able to do so. It does not encourage or force the payment by every school district of the highest amount which it can pay towards the minimum prescribed.

The counties in the State which pay the lowest salaries to teachers are counties in which even if the maximum amount of taxes authorized by law be levied, the minimum wage provided for in this Act

will not be reached, and therefore, the law will have no application to such counties under the proviso. In other words, such counties may refuse to levy taxes even to the maximum provided for by law and still incur no penalty. The result would be that in the very places where this law is most needed, it would not be operative at all. In fact, I have been advised by eminent lawyers that for this reason the bill is plainly unconstitutional.

For the reasons above stated I withhold my approval of this bill.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

PAROLE OF CONVICTED PERSONS.

June 30, 1919.

The Honorable, the House of Representatives:

I am returning herewith without my approval House Bill No. 423, the same being a bill for "An Act to amend Section 3 of an Act entitled, 'An Act to revise the law in relation to the sentence and commitment of persons convicted of crime or offenses and providing for a system of parole and to repeal certain Acts and parts of Acts therein named,' approved June 25, etc.," and for reason for my veto submit the following:

This bill is amendatory of Section 3 of the Parole Act of 1917. Section 3 of this Act is also amended by Senate Bill No. 478, which I have approved.

For the reason that I have approved one bill amendatory of this section, I withhold my approval of this bill.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

RESIDENCE OF NORMAL SCHOOL PRESIDENT.

June 30, 1919.

The Honorable, the House of Representatives:

I return herewith without my approval the following item contained in House Bill No. 455, the same being a bill for "An Act making appropriations for the State Normal Schools":

> "For the purchase of house and lot to be occupied as a residence by the president of the Northern Illinois State Normal School, $15,000."

I veto this item for the following reasons:

In my judgment it would be an unjust discrimination to furnish a residence for a normal school president at one point, and not at the four other locations.

The normal school board has under consideration the recommendation of the construction on the campus of each normal school of a suitable residence for each president. A residence located in some part of the town away from the school would not in my opinion be desirable. Until such time as proper consideration can be given to a

recommendation of this kind, it would be unwise and uneconomical to purchase any outside property.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

WASH ROOMS.

June 30, 1919.

The Honorable, the House of Representatives:

I return herewith without my approval House Bill No. 505, the same being a bill for "An Act to amend Section 2 of an Act entitled: 'An Act to provide for wash rooms in certain employments to protect the health of employees and secure public comfort'." approved June 26, 1913, in force July 1, 1913, and for reasons for my veto submit the following:

This bill is amendatory of Section 2 of what is commonly called "The Wash-house Act". The same section is amended by Senate Bill No. 578. The latter bill was the result of a recommendation by the State Mining Commission. That Commission does not recommend or approve House Bill No. 505. In my opinion, the amendment to "The Wash-house Act" recommended by the State Mining Commission is the one that should be approved. I therefore withhold my approval of this bill.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

HIGH SCHOOL TUITION.

June 26, 1919.

The Honorable, the House of Representatives:

I return herewith without approval House Bill No. 539, the same being a bill for "An Act for the relief of Union School District No. 4 in the counties of Cook and Lake and to make an appropriation therefor", and for reason for my veto submit the following:

In an opinion to me under date of June 23, 1919, the Attorney General advises me that in his opinion the bill is unconstitutional. I append hereto a copy of the opinion of the Attorney General.

For the reason stated in the opinion of the Attorney General, I withhold my approval of this bill.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

June 23, 1919.

To THE GOVERNOR, *Springfield, Illinois.*

SIR: I have the honor to acknowledge receipt of your communication of June 21, transmitting to me House Bill No. 539, with a

request for an opinion as to its constitutionality and form, said bill being entitled:

> "An Act for the relief of Union School District No. 4, in the counties of Cook and Lake, and to make an appropriation therefor."

This Act appropriates from the State Treasury $1,842.50 for the relief of Union School District No. 4, reciting that said district during the school years 1915 to 1917 permitted pupils residing in other school districts to attend its high school, expecting to receive tuition therefor in accordance with the provisions of an act entitled,

> "An Act to provide for the payment of high school tuition and to provide free high school privileges for graduates of the eighth grade, and to repeal an Act entitled: 'An Act to provide high school privileges for graduates of the eighth grade,' approved June 26, 1913, in force July 1, 1913," filed July 8, 1915.

The act of 1915 last referred to repealed a somewhat similar act providing high school privileges for eighth grade graduates which was adopted by the Legislature in 1913, and which had been held constitutional by the Illinois Supreme Court in *Cook* v. *Board of Directors*, 266 Ill. 164. The act of 1915 was, however, held unconstitutional in *Board of Education* v. *Haworth*, 274 Ill. 538, the Court pointing out that while the act of 1913 required the tuition of pupils so sent to high schools in other districts to be paid by the district in which they resided, the act of 1915 required that such tuition be paid by the county superintendent of schools out of the State school funds apportioned to that county before distributing same as otherwise provided by law. In declaring said Act unconstitutional, the Court referred to Section 1 of Article 9 of the Constitution, which requires the General Assembly to provide such revenue as may be needed by levying a tax by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property, and states at page 544 that:

> "The effect of the Act of 1915 is to require the taxpayers in a district maintaining a high school to indirectly contribute to the tuition of persons residing in districts maintaining no such high school, and thereby to contribute to the local and corporate purpose of furnishing an education to the children of such district,"

and that the Act thereby violates Section 1 of Article 9 of the Constitution by exempting owners of property in districts not providing four years of recognized high school work from paying taxes proportioned to the value of their taxable property as compared with the taxable property of other districts, to the extent that the State school fund is apportioned to a local and corporate purpose. The Act is also held objectionable because it in effect returns to school districts not maintaining a high school a part of the taxes levied for State purposes and amounts to a practical release or discharge of a proportionate share of the taxes levied for State purposes in violation of Section 6 of Article 9 of the State Constitution.

Examining House Bill 539 in the light of the constitutional objections noted in the decision referred to, it appears that the Supreme Court having held that the tuition of such pupils cannot be paid out of the State school fund, the Legislature now seeks to reimburse a

school district by paying such tuition out of the State Treasury, thus appropriating the general funds of the State for the payment of the tuition of a few residents of the school district concerned. Such payment of the local obligations due to Union School District No. 4 by other school districts appears to be open to the same constitutional objections noted by the Supreme Court in its opinion in *Board of Education* v. *Haworth, supra.*

In addition to the foregoing, it may be noted that as the Act of 1915 has been held unconstitutional and void, it must be considered an absolute nullity, and the Act of 1913 was, therefore, never legally repealed and remains in full force and effect today. Under the provisions of said Act, the district in which such school pupils resided is compelled to pay their tuition to the district maintaining the high school which they attend.

The Union School District No. 4 is, therefore, not without remedy to secure the payment of a sum of $1,842.50 due to it on account of the tuition of such pupils but may collect the same from the district in which they reside, and which is legally responsible for this obligation.

The bill under consideration in effect appropriates the moneys of the State to pay the debt of the local school district responsible for this obligation, and appears, therefore, to violate Section 20 of Article 4 of the State Constitution, which provides:

> **"The State shall never pay, assume or become responsible for the debts or liabilities of, or in any manner give, loan or extend its credit to or in aid of any public or other corporation, association or individual."**

For the reasons noted, it is my opinion that House Bill No. 539 is unconstitutional. I return same to you herewith.

Respectfully,

EDWARD J. BRUNDAGE,
Attorney General.

PRACTICE OF DENTAL HYGIENE.

June 30, 1919.

The Honorable, the House of Representatives:

I return herewith without my approval House Bill No. 555, the same being a bill for "An Act entitled, 'An Act to regulate the study and practice of dental hygiene,'" and for reason for my veto submit the following:

In an opinion under date of June 28, 1919, the Attorney General advises me that, in his opinion, the bill is unconstitutional. A copy of the opinion of the Attorney General is attached hereto.

For the reasons stated in the opinion of the Attorney General, I withhold my approval of this bill.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

June 28, 1919.

To The Governor, *Springfield, Illinois.*

Sir: I have the honor to acknowledge receipt of House Bill No. 555, the same being a bill for an Act entitled,

"An Act to regulate the study and practice of dental hygiene,"

which was transmitted to me by your direction with a request for an opinion as to its constitutionality and form.

The bill provides that dental colleges and institutions of learning, approved by the Department of Registration and Education, may establish courses in dental hygiene, such courses to be approved by said department, and that students who have had two years in an accredited high school or its equivalent may be graduated as dental hygienists at the end of one college year of thirty-two weeks, upon completion of the prescribed course of study.

The bill further provides for an examination of graduates of such institutions which shall include both practical demonstrations and written tests and shall embrace the subjects usually taught in courses of dental hygiene, and for a license to those who pass a satisfactory examination to practice dental hygiene as specified in the bill. The bill provides for the revocation of the license by the department, and that dental hygienists violating the provisions of the Act shall be punished as provided by law for persons violating the provisions regulating the practice of dentistry.

The bill provides that schools, hospitals and other institutions, whether public or private, which are approved by the Department of Registration and Education, may employ such licensed dental hygienists; that dental hygienists may remove deposits, accretions and stains from the exposed surface of the teeth, but shall not perform any further operation upon the teeth or the tissues of the mouth, and may operate as above described, only in the aforesaid institutions and under the direction and supervision of a licensed dentist; and that such dental hygienists may also be instructors in dental hygiene. But it is provided that it shall not be compulsory on the part of any student or patient of said schools or institutions, or on the part of parents or guardians thereof to submit to the ministration of dental hygienists.

The bill provides for the payment of examination and license fees and for the registration of licenses with county clerks.

The bill is very loosely drawn and confers almost unlimited power in relation to the subject upon the Department of Registration. Nothing in the bill prescribes any standards for the dental schools or institutions which may establish courses in dental hygiene, or what shall be course of study in dental hygiene shall be. They are merely to be approved by the department. The bill implies but does not state directly that only graduates of such approved schools and institutions shall take the examinations. The scope of the examination is left indefinite as to the subjects included therein.

Only schools, hospitals and other institutions public and private *"Which are approved by the Department of Registration and Education* may employ such licensed dental hygienists."

In my opinion this is clearly an unconstitutional delegation of legislative power to the Department of Registration and Education. The power is given to the Department without furnishing any standard or guide by which the courts may determine whether the requirements of the Department are unreasonable or not. Legislation involving this principle has been repeatedly condemned by the Supreme Court, *Ruhstrat v. People,* 185 Ill. 133; *Noel v. The People,* 187 Ill. 587; *People v. Kane,* 288 Ill. 238.

The bill provides for the adoption and promulgation of no rules or regulations by the Department as to the qualifications of the schools, the scope of the examination, or the kind or character of the schools or institutions which may employ such licensed dental hygienists.

If there were any such provision in this law, it might be held valid. *People v. Kane* supra. Under this bill the said Department might permit the Northwestern University to establish a course of study and refuse to permit the University of Chicago to do so, absolutely at its discretion. It might permit the Board of Education of Springfield to employ licensed dental hygienists and arbitrarily refuse to approve such employment by the Board of Education of Peoria.

For these reasons I am of the opinion that said House Bill 555 is unconstitutional.

I find no objection to the form of the bill and I am returning the same herewith.

Respectfully,

EDWARD J. BRUNDAGE,
Attorney General.

FRED FLEURY CLAIM.

June 30, 1919.

The Honorable, the House of Representatives:

I return herewith without my approval House Bill No. 566, the same being a bill for "An Act for the relief of Fred Fleury, and making an appropriation therefor."

This boy died at the St. Charles School for Boys on March 14, 1916, as the result of an accident while in the performance of duty at said institution. All of the information and evidence, and the testimony of the boy himself, indicate that the accident was entirely the result of his own carelessness. If the State should commence the payment of claims of this nature to inmates of institutions who are injured or killed entirely as the result of their own careless acts, it would in my judgment entail a very large expenditure in the future.

For the above reason I withhold my approval of this bill.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

PAY FOR NEWSPAPERS.

June 30, 1919.

The Honorable, the House of Representatives:

I return herewith without my approval House Bill No. 568, the same being a bill for "An Act in relation to the collection of payments for newspapers, magazines and other periodicals," and for reasons for my veto submit the following:

This bill provides that "unless otherwise expressly agreed" no person shall be liable to pay for any copy of any newspaper, magazine or other periodical sent to him "through the United States mail" for which he has not subscribed, or for which his subscription has expired.

This bill in my judgment creates an unwarranted discrimination between newspapers and others who may enter into contracts. In order that a newspaper may recover this bill would require proof of an express contract while under like circumstances others might recover for materials furnished and supplied upon an implied contract. The fact that this bill is in harmony with the Federal law forbidding a newspaper to send through the mails any copies except to regular subscribers does not change the fundamental principle of equality.

For reasons above stated, I withhold my approval of this bill.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

JUVENILE COURTS.

June 30, 1919.

The Honorable, the House of Representatives:

I return herewith without my approval House Bill No. 590, the same being a bill for "An Act to amend Section 2, of an Act entitled, 'An Act relating to children who are now or may hereafter become dependent, neglected or delinquent, to define these terms, and to provide for the treatment, control, maintenance, adoption and guardianship of the person of such children,' approved April 21, 1899, in force July 1, 1899, as amended," and for reasons for my veto submit the following:

This bill is amendatory of the Juvenile Court Act and provides that city courts in cities having a population of not less than seventy-five thousand nor more than two hundred thousand, except city courts in cities which are county seats, shall have original jurisdiction in Juvenile Court cases. Under the present law, both the Circuit Court and the County Court have jurisdiction in cases arising under the Juvenile Court Act. It is the view of practical administrators of the Juvenile Court Act that its successful administration should be centralized in one court in order to have a uniform policy in the exercise of jurisdiction. The court has a wide discretion and satisfactory work by the court requires special study by the judge

to accomplish the purpose of the Act. I regard the principle announced in this bill as a step in the wrong direction.

For the reasons above stated, I withhold my approval of this bill.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

CONTROL OF INSURANCE RATES.

June 30, 1919.

The Honorable, the House of Representatives:

I return herewith without my approval House Bill 593, the same being a bill for "An Act providing for the organization, operation and supervision of fire insurance rate making bureaus, to provide for a review of any rates fixed by such bureau for insurance upon property in this State, to prohibit discrimination in such rates and to regulate all agreements between fire insurance companies or their agents affecting such rates", and for reasons for my veto submit the following:

Under the present law of this State, fire insurance companies have no legal right to combine for the purpose of fixing rates, or to enter into agreements regarding the rates to be charged for fire insurance by the parties to such an agreement. (People v. Aachen & Munich Fire Insurance Co., et al., 126 App. 636.)

If this bill becomes a law, it will not only legalize rating bureaus (which, under the bill, may consist of one or more insurance companies), but all companies will be compelled, under penalty, to become members of some one or more rating bureaus, and such bureaus will have power to fix rates without any control by any State agency over the rates thus fixed.

If it is deemed proper to give to fire insurance companies the right to combine in making insurance rates, it is my opinion that such right should be coupled with a delegation of power to the proper State department to pass upon the reasonableness of the rates thus fixed.

The only provision of this bill, in its present form, which, in my opinion, might be of benefit to the public is the one giving to the Department of Trade and Commerce the power to prevent discrimination between risks of essentially the same hazards and having substantially the same degree of protection against fire. However, this power is very much limited and in fact practically nullified by a proviso to section 8 which reads as follows:

> **"Provided, recognition shall be given to territorial classification, and where such territorial classification is used it shall not constitute discrimination."**

For the reasons above stated, I withhold my approval of this bill.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

GENERAL REVENUE ACT.

June 30, 1919.

The Honorable, the House of Representatives:

I return herewith without my approval House Bill No. 594, the same being a bill for "An Act to amend Section 210 of an Act entitled, 'An Act for the assessment of property and for the levy and collection of taxes, ' " and for reasons for my veto submit the following:

This bill amends Section 210 of the General Revenue Act. This section was also amended by Senate Bill No. 260, which I approved. House Bill No. 594 and Senate Bill No. 260 are identical in terms.

For the reasons above stated I withhold my approval of this bill.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

CONTROL OF PARKS.

June 26, 1919.

The Honorable, the House of Representatives:

I am returning herewith without approval House Bill 686, the same being a bill for "An Act to enable park commissioners to maintain, improve and govern parks, boulevards, driveways, highways, promenades, and pleasure grounds under their control", and for reasons for my veto submit the following:

This bill was introduced and passed through the General Assembly before the series of bills changing the basic rate of taxation was passed. The substance of this bill is incorporated in Senate Bill 567 which has been approved for the reason above stated; therefore, I return this bill without approval.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

June 24, 1919.

TO THE GOVERNOR, *Springfield, Illinois.*

SIR: You have transmitted to me House Bill No. 686 and request that I render you an opinion thereon as to form and constitutionality. Said bill is an act entitled:

> "An Act to enable park commissioners to maintain, improve and govern parks, boulevards, driveways, highways, promenades, and pleasure grounds under their control."

The bill provides that the board of public park commissioners for any three towns, under and in pursuance of any act of the General Assembly of this State which has been or may be adopted by the legal voters of such three towns, for the purpose of locating, establishing, enclosing, improving or maintaining any public park, boulevard, driveway, highway or other public work or improvement, may until July 1, 1922, levy an annual tax not to exceed one and one-half

mills on the dollar, for park purposes; such levy to be in addition to other taxes authorized to be levied by such boards.

Said bill is not subject to objection as to form or constitutionality. Same is herewith returned.

Very truly yours,

EDWARD J. BRUNDAGE,
Attorney General.

TUITION OF HIGH SCHOOL STUDENTS.

June 30, 1919.

The Honorable, the House of Representatives:

I am returning herewith without my approval House Bill No. 708, the same being a bill for "An Act making an appropriation to School District No. 11, Irvington, Illinois."

Under date of June 28th, 1919, the Attorney General states that in his opinion the bill is unconstitutional. The reasons therefor are set forth in his opinion, a copy of which is *attached hereto*. For this reason I am returning this bill without my approval.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

June 28, 1919.

To THE GOVERNOR, *Springfield, Illinois.*

SIR: You have transmitted to me, under date of June 24, House Bill No. 708, the same being a bill for an act entitled,

> "An Act making an appropriation to School District No. 11, Irvington, Illinois,"

with a request for my opinion as to the constitutionality and form thereof.

This act appropriates to the school district named in the title the sum of $980 for the purpose of defraying the expense of providing instruction in the public schools for the inmates of the orphan's home located in that district. Apparently the reason for the appropriation is set forth in the preamble to the act; that an orphan's asylum is located in said district and the inmates thereof have a right to attend the public schools of the district without payment of tuition. *Ashley v. Board of Education* 275 Ill. 274. And that the funds nominally available to said district are not sufficient to defray the expense of providing instruction for the orphans residing in such asylum.

This appropriation is not made from the school fund but is directed to be paid out of any fund in the State treasury not otherwise appropriated.

The establishment and maintenance of district schools is a local and corporate purpose. Taxes for such purposes must be borne by the local corporate body. The appropriation made by this bill requires the taxpayers of the state at large to pay taxes that should be paid by

a particular school district. It is in violation of section 1 of article IX of the constitution which requires that

> "The General Assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property."

It is also in violation of section 6 of article IX of the constitution which provides that the

> General Assembly shall have no power to release or discharge any county, city, township, town or district whatever of its proportionate share of taxes to be levied for State purposes, and that commutation for such taxes shall not be authorized in any form whatever.

Board of Education v. Haworth, 274 Ill. 538, 543, 546.

I return the bill herewith, without objection as to the form thereof, but with the above objections as to its constitutionality.

Respectfully,

EDWARD J. BRUNDAGE,
Attorney General.

CANCELLATION OF CONTRACTS.

June 30, 1919.

The Honorable, the House of Representatives:

I return herewith, without my approval, House Bill No. 720, the same being a bill for "An Act to authorize the alteration or cancellation of contracts for public works entered into before the sixth day of April, nineteen hundred and seventeen, and to provide compensation for work or materials under such contracts with regard to emergency war conditions," and for reasons for my veto submit the following:

In an opinion to me under date of June 28, 1919, the Attorney General advises me that in his opinion the Act is unconstitutional. A copy of the opinion of the Attorney General is appended hereto.

For the reasons stated in the opinion of the Attorney General, I withhold my approval of this bill.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

June 28, 1919.

TO THE GOVERNOR, *Springfield, Illinois.*

SIR: I have the honor to acknowledge receipt of your communication of June 24, transmitting to me House Bill No. 720, with the request for an opinion as to its constitutionality and form. The title of said bill is as follows:

> "An Act to authorize the alteration or cancellation of contracts for public works entered into before the sixth day of April, nineteen hundred and seventeen, and to provide compensation for work or materials under such contracts with regard to emergency war conditions."

This act permits counties, townships, sanitary, drainage, school, park and road districts, cities, villages and other similar govern-

mental corporate bodies to grant an extension of time to a contractor for the performance of a contract for public work entered into prior to the declaration of war by the United States against Germany, or to cancel such contract and to release such contractor from all liability thereunder. The act further provides that the contractor may be paid the contract price for the portion of the work completed or material furnished, or, as a condition for the agreement for cancellation and payment, he may be compelled to complete the contract on payment of his necessary expenses. It also provides that the contracting municipal corporation may, on petition of a contractor, who has completed such a contract, cancel the same and pay him the cost of the work or materials without regard to the contract price, or if payment of the contract price has been made, pay him the excess of the actual cost over the contract price.

It is my opinion that this act is plainly and palpably in contravention of section 23 of article 4 and also section 14 of article 2 of the constitution.

Section 23 of article 4 of the constitution provides as follows:

> **"The General Assembly shall have no power to release or extinguish, in whole or in part, the indebtedness, liability, or obligation of any corporation or individual to this State or to any municipal corporation therein."**

In the case of *Chicago* v. *P. C. C. & St. L. Railway Company,* 244 Ill. 220, the Supreme Court held that a city council is not prohibited from giving up a liability in consideration for something which was deemed of equal or greater value but at the same time recognized the principle that authorities of municipal corporations have no power to make donations to any individual or corporation, and that the revenues are to be held for corporate purposes.

In discussing section 23 of article 4 of the Constitution, the court said in that case

> **"It may be conceded that if the General Assembly could not release or extinguish a liability to any municipality it could not authorize the municipality to do the same thing."**

Section 14 of article 2 of the constitution provides as follows:

> **"No *ex post facto* law, or law impairing the obligation of contracts, or making any irrevocable grant of special privileges or immunities, shall be passed."**

That provision of the constitution is designed to secure good faith in the performance of contracts, by protecting their obligations against the passage, by the State, of laws which in their effect would relieve either party from what he had voluntarily pledged his faith to do or not to do (*Louisiana* v. *New Orleans,* 109 U. S. 285; *Freeland* v. *Williams,* 131 U. S. 405.)

The principle is well established not only that contracts of a State or municipality are within this clause the same as the contracts of individuals or private corporations (*Hall* v. *Wisconsin,* 103 U. S. 5) but also that a municipal corporation has the same constitutional protection that a natural person has to all contract rights and remedies other than those which are purely political (*Board*

of Education v. *Blodgett*, 155 Ill. 441; *Dartmouth College* v. *Woodward*, 4 *Wheat*, 518, 694.)

From a consideration of the foregoing, I am constrained to hold that this act is clearly unconstitutional. I find no objections to the form of the act.

I am returning herewith House Bill No. 720.

Respectfully,

EDWARD J. BRUNDAGE,
Attorney General.

STATE APPROPRIATIONS.

June 30, 1919.

The Honorable, the House of Representatives:

I return herewith House Bill No. 754, entitled, "An Act to provide for the ordinary and contingent expenses of the State government until the expiration of the first fiscal quarter after the adjournment of the next regular session of the General Assembly."

I veto and withold my approval of the following items therein contained:

Page 30, section 1, paragraph (23), lines 19 and 20 from the top of the page "For the purchase of submerged lands along the Illinois River .....$50,000.00."

Page 61, section 1, paragraph (61½). I veto this entire paragraph appropriating $10,000.00.

Page 73, section 1, paragraph (71), lines 3, 4 and 5 from the top of the page

"1 Examiner.....$3,000 per annum
1 Examiner.....$2,400 per annum
1 Stenographer.....$1,200 per annum"

Page 77, section 1, paragraph (74½). I veto this entire paragraph appropriating $50,200.00.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

WRIT OF ERROR IN DEATH SENTENCE.

June 30, 1919.

The Honorable, the House of Representatives:

I return herewith without my approval House Bill No. 756, the same being a bill for "An Act to amend Sections 1, 2, 3, 4 and 5 of Division XV of an Act entitled, 'An Act to revise the law in relation to criminal jurisprudence,'" approved March 27, 1874, in force July 1, 1874, as amended, and for reasons for my veto submit the following:

In an opinion to me under date of June 28, 1919, the Attorney General advises me that one section of this Act is invalid. The section which the Attorney General finds to be invalid is so interwoven with

the other sections as to make all of the provisions of the bill unconstitutional. A copy of the opinion of the Attorney General is appended hereto.

For the reasons stated in the opinion of the Attorney General, I withhold my approval of this bill.

Respectfully submitted,

FRANK O. LOWDEN,
Governor.

June 28, 1919.

To THE GOVERNOR, *Springfield, Illinois.*

SIR: I have the honor to acknowledge receipt of your communication of June 24, enclosing House Bill No. 756, for my opinion as to its constitutionality and form the same being,

> An Act to amend Sections 1, 2, 3, 4 and 5 of Division XV of an Act, entitled, "An Act to revise the law in relation to criminal jurisprudence," approved March 27, 1874, in force July 1, 1874, as amended.

As the law stands today, concerning the date for the execution of the death penalty, the trial court shall not set a date that will occur before the tenth day of the term of the Supreme Court occurring next after the pronouncing of the judgment. See Division IV, section 1, chapter 38, paragraph 439 of the Criminal Code.

A writ of error is not a matter of right where the sentence is death, but may be issued upon the order of a judge or the Supreme Court, if in session, and the writ of error may, by a judge of the Supreme Court or the Supreme Court, be made a supersedeas. See section 1, division XV, paragraph 458, chapter 38 of the Revised Statutes, Criminal Code.

The present law, except where the sentence is death, makes writs of error a writ of right and issued of course. If a supersedeas is desired, it must be ordered by a judge of the Supreme Court or by the Supreme Court, if in session, upon error, etc., appearing in the record.

The present bill under consideration does not attempt to follow the sections of the old law by amending the language in each, but really is a substitution of five sections for five other sections, rearranging entirely their order. This bill makes writs of error in all criminal cases writs of right and issued of course. However, section 2 and section 3 require an order of court or of a judge to make the writ of error a supersedeas without limiting it to any particular class of criminal cases. Section 4 reads as follows:

> "In any prosecution by indictment for a capital offense, when the sentence is death, *upon the filing with the clerk of the Supreme Court of a transcript and certificate with an assignment of the errors relied upon, the clerk shall issue a supersedeas of right* to stay the execution of the sentence of death until the further order of the court, but the prisoner shall not be discharged from jail."

It will be noted that *upon filing with the clerk of the Supreme Court of a transcript and certificate with an assignment of errors relied upon, the clerk shall issue a supersedeas of right to stay the execution of the sentence of death until the further order of the court.*

This section confers upon the clerk judicial power. It is a delegation by the legislature of judicial power to an executive or administrative officer, which, of course, is prohibited by the constitution and it is unnecessary to cite authorities. This section is unconstitutional.

Under the law as it is today, the death sentence can not be executed before the tenth day of the next term of the Supreme Court and no rights of the defendant are lost.

But by this change there would be unwarranted and unnecessary delay in a case in which the Supreme Court or a judge thereof in vacation, should determine that there was no error and no reasonable doubt of the guilt of the defendant.

Section 4 is so interwoven in the bill as to affect all of its provisions.

I find no objection to the form of the bill.

Very truly yours,

EDWARD J. BRUNDAGE,
Attorney General.

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